



## Lamoine Board of Selectmen

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### Minutes of June 26, 2014

Chair Gary McFarland called the meeting to order at 6:30 PM

Present were: Selectmen Nathan Mason, Bernie Johnson, Gary McFarland, Heather Fowler, S. Josephine Cooper; town attorney Daniel Pileggi, administrative assistant Stu Marckoon, Kathryn Gaianguet, Lynn Hutchinson.

Jo moved to enter executive session pursuant to 1 MRSA § 405(6)(e) to confer with the town attorney. Heather 2<sup>nd</sup>. **Vote in favor was 5-0 at 6:30 PM.** The members of the public in the room at the time left the room. Out at 7:08 PM.

Additional members of the public returned to the meeting room, including Bob Christie, Taylor Vortherms (Ellsworth American Reporter), Lynn Tscheiller, Carol Korty, Susan Wuorinen, John Holt, Brian Hubbell (State Representative), Catherine deTuede, John Jerabek, Elizabeth McMillen, Kathleen Rybarz, Stephen Salsbury, David Legere, Valerie Sprague, Walter Grenier, Nancy Pochan and Annie Crisafulli. There were others at the meeting, but their names were not readily available.

**Consent Agreement re: notices of violation – Gravel Permits** – Jo moved to enter into consent agreements with John W. Goodwin Jr. and Harold MacQuinn, Inc. in regard to gravel permits which received notices of violation and which remain in violation of the conditional permits that were issued by the Planning Board. Nathan 2<sup>nd</sup>.

Jo said her concern is the Selectboard's role is to uphold the new ordinance as it exists, and the board has not had a chance to draft any changes to the current ordinance. She said the gravel pit operators are monitoring their pits, and she is OK with that the agreement states that the ordinance in force at the date in the agreement will be adhered to. She said she thinks it's as realistic as any agreement is going to get. **Vote in favor was 5-0.**

Planning Board chair John Holt asked what was in the consent agreement. Stu reported that the town received a report this afternoon that six of the nine gravel pits that were issued notices of violation were now in compliance, but three are not. Jo said the agreement proposes to have the Selectmen put a new ordinance to the voters in November, and the Selectmen want to make sure they're not letting this go by the wayside. Rev. Holt read a prepared statement which summarized that the permits were granted with conditions, and essentially the gravel extraction operations have been operating without permits since May 1, 2014. He said the Selectmen have no business becoming involved in this, and that Selectmen are attempting to unilaterally amend the ordinance. Jo said she disagreed and the board asked town attorney Daniel Pileggi to stay for this matter.

Mr. Pileggi said the enforcement authority rests with the Code Enforcement Officer and the Board of Selectmen. He said the Planning Board has no enforcement authority. He said consent agreements are a means to negotiate a resolution to bring violations into

compliance. He said the Gravel Work Group has done work that may or may not result in changes to the Gravel Ordinance. He said the Selectmen could make a delay in litigation pending proposed ordinance changes. He said these particular consent agreements require the landowners to be in compliance.

Rev. Holt asked what the deadline is for compliance. Mr. Pileggi said it would be within 6-months of a vote to amend the Gravel Ordinance or May 1, 2015. Jo said if the Selectmen put a new ordinance before the town, it's not known when or if it will pass. Mr. Pileggi said the agreements are only in regard to water quality monitoring, and there are no other delays for compliance with any other part of the requirements.

Rev. Holt asked what the reason is for the delay. He said another gravel pit operator has drilled the required wells and provided data to the Planning Board in the course of a few months. John Jerabek said the delay is with gravel pit owners who set out not to comply with the gravel ordinance. Gary said the pit operators have drilled wells and the town is starting to see compliance. Mr. Jerabek said there is a perception that the ordinance must change or a lawsuit will result, and that does not look good. Gary said the agreements require the gravel operators to be in compliance with the ordinance in place at that time. Mr. Pileggi said the applicants are bound to comply with the consent agreement.

Kathryn Gaianguet asked if there could be a copy of the consent agreement. Gary said that it is a public document. Stu said he would post them on the town's website. Carol Korty asked why the Selectboard did not uphold the existing ordinance and whether it was fear of a lawsuit. Nathan said the permits went through the process of Planning Board review. He said had the permits not been approved, the outcome might have been different.

Rev. Holt said the Planning Board made a grant of a 6-month period to comply with the application items. He said the applicants thought there would be some relief and he recapped the agreement with the Planning Board. He said it was a mistake to not grant a 6-month permit. He said there was no articulation of policy to enable the operators not to comply with the conditions. He said he challenged whether the Selectmen have the legal authority to enter into the consent agreements. He said this has contributed to bitterness and anger. He said he was confused why the Selectmen are not defending the gravel ordinance.

Jo said the Selectmen have addressed the agenda item, and it's not up to the board to decide whether they like the ordinance or not, but they must enforce it, and that is what the board is trying to do. She said the purpose of the consent agreement is not for another delay. Rev. Holt asked if the conditions have been complied with and can they continue to extract material. Gary said the agreements do not give the operators 3-years to comply. Mr. Pileggi said the agreements only apply to the three largest pits, the rest are in compliance as the operators have done what they are supposed to do. A brief discussion followed on which pits were in compliance.

David Legere asked if this was giving the town until November 1<sup>st</sup> to come up with ordinance re-writes. He asked if the operators would have 6-months to comply with any new changes. He said that was giving the operators 11-months to do things that might change. He said the Selectmen got the work group options this evening along with the report from Robert Gerber that supports test wells. He said the operators could easily complete the well installation in half of that 11-month time. He asked what the result is if the operators don't follow through.

Bernie said this consent agreement is it. He said if the Selectmen decide to submit changes to the voters, and the voters say no, the operators have 6-months or until May 1, 2015 to comply with the ordinance in effect. He said the agreements offer an end to all of this. He said he understands that some are concerned that it takes longer to get to complete compliance.

Mr. Legere asked if enforcement is spelled out if the operators don't comply with the agreement. Catherine deTuede asks if there is any language to stop the operators from filing suit. Gary said anyone can sue. Bernie read from section "C" of the agreement which states "By May 1, 2015, or within 6 months of a vote on proposed amendments to Gravel Extraction Ordinance, the Owner will bring the Property into compliance with the monitoring requirements in effect in the Town at that time."

Bob Christie said perception is reality, and it's disappointing to see things continue. He said a lot of things are galvanized and the town does not get served well by that. He said the two sides are not far apart on some of these issues. Ms. Gaianguet said she is troubled to see people in government giving it all to the pit companies who have not shown they care about the town. She said she has heard statements that the operators will not comply or they will go to court. She said she hopes there is some shift in the relationship between the pit owners and the town. She said the consent agreement is not a positive direction and further enables a dysfunctional relationship.

Jo said there was a misunderstanding by the gravel pit owners that things would change by May 1. She said she is concerned about the division in town over this issue. She said the whole ordinance needs more discussion and hoped it could be discussed in an open town meeting format. She said she is also concerned that accusations of nefarious actions against town officials will cause fewer people to want to serve. Nathan said the Selectmen have a job to enforce the ordinances. He said that takes time. He said if one looks at the permits that were approved; the permit holders are moving forward toward compliance. He said the three permits not in compliance are only violating one portion of the entire set of review criteria. He said the agreements help to get there, and that's what the Selectmen are trying to do.

Stu asked who signs the agreement. Gary said it should be the Selectmen. Both Gary and Steve Salisbury signed the consent agreements.

**Minutes of June 12, 2014** – Nathan moved to approve the minutes as written. Heather 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Expenditure Warrant 24** – Selectmen signed the warrant in the amount of \$114,372.74. Stu reported most of the amount was for paving the transfer station and Walker Road. Bernie asked what Tyler Business Forms was. Stu said it's the school software provider.

**Cash & Budget Reports** – Stu said it looks like the town will finish about \$30,000 ahead of budget on excise tax collections.

**Audit Engagement Letter** – Jo moved to sign the annual audit engagement letter with James Wadman, CPA. Bernie 2<sup>nd</sup>. **Vote in favor was 5-0, Gary signed the letter.**

**Appointments** – Nathan moved to approve the following appointments:

Name	Offices	Term Expires June 30 <sup>th</sup>
Jennifer Kovacs	Tax Collector, Excise Tax Collector, Town Clerk, Deputy Treasurer	2015
Stuart Marckoon	Road Commissioner, Deputy Fire Warden, General Assistance Administrator, Addressing Officer, Local Emergency Management Director	2015
Michael Arsenault	Animal Control Officer	2015
George Smith	Fire Chief, Fire Warden	2015
Michael Jordan	Code Enforcement Officer, Plumbing Inspector	2015
Millard Billings	Deputy Code Enforcement Officer, Deputy Plumbing Inspector	2015
David Herrick	Harbor Master	2015
Kevin Murphy	Deputy Harbor Master	2015
Hancock "Griff" Fenton	Appeals Board Member	2017
Jon Van Amringe	Appeals Board Member	2017
Merle Bragdon	Budget Committee Member	2017
Robin Veysey	Budget Committee Member	2017
Anne Labossiere	Conservation Commission Member	2017
Lawrence Libby	Conservation Commission Member	2017
Paula Gardner	Parks Commissioner	2017

Heather 2<sup>nd</sup>. **Vote in favor was 5-0, Selectmen signed the various appointment forms for those listed above, noting that all were reappointments.**

**Planning Board** – Jo noted Perry Fowler who is currently an alternate Planning Board member has asked to be appointed to the 5-year term. Bernie asked if others who have put their names in would accept the alternate position being vacated by Mr. Fowler if he were appointed. Nathan moved to appoint Mr. Fowler to the 5-year term. Bernie 2<sup>nd</sup>. Valerie Sprague and David Legere both indicated they would accept the alternate appointment. Richard McMullen was not present to indicate whether he would accept or not. Bernie noted the alternate's role is a learning curve. **Vote in favor was 4-0, Fowler abstained.**

**Planning Board – Alternate Member** – There was a brief discussion as to whether a second alternate position would open up. Both Mrs. Sprague and Mr. Legere gave brief summary of their qualifications and why they would like to serve. It was noted that all three candidates had served in the Gravel Work Group. Gary thanked those in the group for their service. Jo moved to appoint David Legere as an alternate. Heather 2<sup>nd</sup>. **Vote in favor was 4-1 (Johnson opposed).**

**Parks Commission** – No one has offered to serve, the position will continue to be advertised.

**Technology Committee** – Heather moved to appoint William Butler to a 1-year term, Merle Bragdon to a 2-year term, and Brett Jones to a 3-year term. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Comprehensive Plan Committee** – There was a discussion about those who've offered to serve and how to go about appointing the committee.

Jo moved to appoint Valerie Sprague. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

Heather moved to appoint Kathryn Gaianguet. Jo 2<sup>nd</sup>. **Vote in favor was 5-0.**

Nathan moved to appoint Bonnie Marckoon. Jo 2<sup>nd</sup>. **Vote in favor was 5-0.**

Jo moved to appoint Fred Stocking. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

Bernie moved to appoint Michael Jordan. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

Gary moved to appoint Brett Jones. Bernie 2<sup>nd</sup>. **Vote in favor was 4-1 (Cooper opposed)**

Jo moved to appoint Robert Christie. Gary 2<sup>nd</sup>. **Vote in favor was 3-2 (Mason, Johnson opposed)** Mr. Christie said he would prefer to have a unanimous backing and could see just offering advice through the process and he would just as soon step back if there is some opposition. Nathan said he wasn't necessarily opposed, but Mr. Christie's was the 7<sup>th</sup> name offered and he had some other candidates in mind. Bernie said he thought Mr. Christie should serve. Nathan said he did too. Mr. Christie agreed to serve.

Valerie Sprague asked whether there is any conflict of interest in having Michael Jordan serve on the committee where he is a paid town official. Mr. Jordan said normally the Code Enforcement Officer would sit in on proposed ordinance changes and the comprehensive planning process. Ms. Gaianguet asked if other folks on other committees might be asked to come to the Comprehensive Planning Committee meetings.

After a motion to increase the size of the committee to 8-members failed for lack of a second, Jo moved to appoint Andrea Ames as an alternate member of the Comprehensive Planning committee. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Animal Control Officer Contract** – Jo moved to approve a contract with Michael Arsenault, Animal Control Officer. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Time Warner Cable Franchise Renewal** – Stu suggested that this be referred to the newly formed Technology Advisory Committee. Gary moved to do so. Nathan 2<sup>nd</sup>.

Bernie asked about the committee's ability to negotiate a cable contract. Stu reported that Merle Bragdon has some experience. Walter Grenier asked how many people Time Warner serves. Stu said he was not sure and would have to review the last franchise fee payment received. A brief discussion followed regarding areas not served by cable.  
**Vote in favor was 5-0.**

**E-mail update** – Stu reported that the lamoine-me.gov domain e-mail is now working through an arrangement with Time Warner to host the E-mail and DNS service. He asked the Selectmen if they would like to have an e-mail address of [selectmen@lamoine-me.gov](mailto:selectmen@lamoine-me.gov) which would allow folks to e-mail the board directly, with a copy going to the town office. There was no objection.

**Gravel Ordinance Working Group** – Gary reported the group wrapped up its work last evening. Jo asked what the Selectmen should do. Gary suggested reviewing the final report which was included in the material handed out this evening.

Ms. Gaiainguest asked what the next step will be. Gary said the Selectmen will meet and they have to absorb the report and hold some meetings on it. Ms. Gaiainguest asked if this will be an agenda item at every meeting. Gary said that would be determined. He said the issue would be discussed as a board, and if there is any amendment to be offered to the gravel ordinance, he hoped it would be out for November. Ms. Gaiainguest noted that the Planning Board held workshops when developing the present ordinance. Gary said all the Selectmen meetings are public. A brief discussion followed on the report generated by hydro geologist Robert Gerber.

**Traffic Light – Routes 3 & 204** – Bernie said it sounds like a potential agreement with the Town of Trenton has taken a step backward. Stu reported that the Selectmen in Trenton rejected paying for any portion of maintenance, electricity and insurance on the proposed light. A brief discussion followed. Bernie moved to go forward with the traffic light by agreeing to pay for power, insurance and maintenance. Heather 2<sup>nd</sup>. Nathan asked whether the insurance carrier would agree to cover something in another town. Stu said he would check into that. **Vote in favor was 5-0.**

**Heating Assistance Fund** – Stu reported he received an e-mail from the One Hancock organization indicating that the Hancock County Planning Commission has offered to administer assistance programs. Gary said he liked the proposed locally administered program that Stu had drafted. A discussion followed on how to administer a local program and other groups that might have assistance funding available.

Bernie moved to adopt the program as proposed. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0. Selectmen signed the program document.**

**Thank-you letters to Gravel Work Group** – Selectmen signed letters thanking the members of the Gravel Work Group for their service.

**Special Town Meeting Warrant** – Nathan moved to approve a warrant calling for a special town meeting on Thursday, July 17, 2014 at 6:30 PM at the town hall to deal with

the fire budget overrun due to the building maintenance problem. Gary 2<sup>nd</sup>. **Vote in favor was 5-0, Selectmen signed several copies of the warrant.**

**Lamoine Quarterly** – Stu said he's completed a few pages, and would e-mail the draft prior to publication next week.

**Vacation Request** – Stu said he would like to take the week of July 28-through-August 3 off. There was no objection. He reported that July 5<sup>th</sup> the town office would be open.

**Governor LePage Letter re: General Assistance** – Stu reported that a letter from Governor LePage threatens to withhold reimbursement for General Assistance if payment is made on behalf of illegal aliens. Kathleen Rybarz asked if the application asks for immigration status. Stu said that he verifies that the applicant lives in town and the application asks for a social security number but does not ask about immigration status. He said the Attorney General's Office is giving conflicting information from the Governor.

**Legislative Policy Committee Election** – Selectmen cast their votes for Gary Fortier and Dale Sprinkle to serve on Maine Municipal Association's Legislative Policy Committee.

**Returnables Benefit Request** – Jo moved to approve the request submitted by Lamoine Community Arts for the proceeds from returnables in December 2014. Nathan 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Mileage Rate** – Heather moved to set the 2014/15 mileage reimbursement rate at \$0.50/mile. Gary 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Other business** – Carol Korty asked why the Board is not requiring three gravel pits to have test wells. Gary said the issue had been previously discussed, and the Selectmen have signed a consent agreement which gives an expected date of compliance. Nathan said the issue is moving forward and both the town and the pit operators will be working toward compliance in a number of months. Gary said the operators will have to comply with the ordinance. Ms. Gaianguet asked how this meets the needs of the town. Bernie said people seem to want some water testing and every single pit now has a monitoring well, samples taken, and results. He said that is huge progress and it's a win. Gary said all the pits are in compliance with everything else in the ordinance. After further discussion, Jo said she found some of the comments offensive. Gary said there is a lot of work ahead.

**Transfer Station Schedule** – Bernie noted that the Lamoine Transfer Station will be closed on July 4, 2014, but open on July 3, 2014 instead.

**Next Meetings** – The next regular meetings for the Board of Selectmen will be July 17, 2014, August 14, 2014 and September 11 & 24, 2014.

**Executive Session** – Gary moved to enter executive session pursuant to 1MRSA §405(6)(a) for the purposes of conducting a job performance review with Stu. Heather 2<sup>nd</sup>. **Vote in favor was 5-0 at 9:30 PM. Out at 9:50 PM.**

There being no further business, the meeting adjourned at 9:50 PM.

Respectfully submitted,

Stu Marckoon, Adm. Asst. to the Selectmen